

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEPHEN WALSH,
Plaintiff,

CIVIL ACTION
NO: 04-12595-RGS

vs.

WOODS HOLE, MARTHA'S VINEYARD
AND NANTUCKET STEAMSHIP
AUTHORITY,
Defendant.

DEFENDANT'S MOTION TO PRECLUDE THE PLAINTIFF FROM OFFERING
ANY EVIDENCE CONCERNING THE NATURE AND EXTENT OF HIS
ALLEGED PERSONAL INJURIES

Now comes the defendant, Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, in the above-entitled action, by and through its undersigned attorneys, Clinton & Muzyka, P.C., and respectfully moves this Honorable Court to preclude the plaintiff at the time of trial from offering any evidence concerning the nature and extent of his alleged personal injuries, including any evidence past and future pain and suffering. As grounds in support of its motion, the defendant submits the following for the Court's consideration.

BACKGROUND

The plaintiff instituted this action against the defendant for personal injuries he allegedly sustained while serving as an Able Bodied seaman onboard the M/V

EAGLE, a vessel owned and operated by the defendant. On June 22, 2004, the defendant scheduled an Independent Medical Examination of the plaintiff for July 27, 2005 for the purpose of evaluating the nature and extent of his alleged injuries, which consisted of a crush injury and lacerations to his 3rd and 4th fingers on his dominant right hand. The defendant provided plaintiff's counsel with notice of the examination on June 22, 2005. *See, correspondence attached hereto as Exhibit "A."*

The plaintiff failed to appear for the examination despite the fact that defense counsel's letter stated "[p]lease note, any cancellation of this appointment must be given 48 hours in advance of the scheduled examination in order to avoid incurrence of unnecessary expenses by cancellation of an appointment." Before rescheduling the Independent Medical Examination, the defendant confirmed with plaintiff's counsel that his client would attend an Independent Medical Examination. The defendant then rescheduled the Independent Medical Examination for September 13, 2005 and provided plaintiff's counsel with notice. *See, facsimile attached hereto as Exhibit "B."*

The plaintiff failed to appear for the rescheduled examination. As a result, the defendant has been charged a cancellation fee of \$500.00 from the physician that was

to perform the examination. *See, invoice and evidence of payment attached hereto as Exhibit "C."* The plaintiff's medical expert, Dr. Shawn P. Millis, intends to testify at trial that the plaintiff's injuries required several surgical procedures, that he "experienced a lot of pain" as a result, and that he "has decreased sensation and slight tingling and experiences pain within the hand when exposed to cold." *See, Answer No. 19 of Plaintiff's Answers to Interrogatories Propounded by the Defendant attached hereto as Exhibit "D."*

Even though the plaintiff has placed his medical condition into controversy, he has repeatedly refused to attend an Independent Medical Examination. As a result, the defendant been prevented from properly and fully evaluating the nature and extent of his alleged injuries. The proper remedy under these circumstances, the defendant submits, is to preclude the plaintiff from offering any factual or expert evidence concerning the nature and extent of his alleged injuries, including any evidence of past and future pain and suffering, at the time of trial.¹

¹ This is not the first instance where the plaintiff has failed to cooperate through discovery. Despite numerous requests, the plaintiff did not respond to the defendant's Interrogatories and Requests for Production of Documents for approximately eight (8) months, which necessitated the filing of a Motion to Compel.

WHEREFORE, the defendant, Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, prays that this Honorable Court (1) preclude the plaintiff from offering any expert or factual evidence concerning the nature and extent of his alleged injuries at trial, including any evidence of past and future pain and suffering, and; (2) enter an Order requiring the plaintiff to reimburse the defendant the \$500.00 it incurred because of his failure to attend the rescheduled examination.

By its attorneys,

CLINTON & MUZYKA, P.C.

"/s/ Kenneth M. Chiarello"
Thomas J. Muzyka
BBO NO: 365540
Kenneth M. Chiarello
BBO NO: 639274
One Washington Mall
Suite 1400
Boston, MA 02108
(617) 723-9165

Dated: November 8, 2005

CLINTON & MUZYKA, P.C.

ATTORNEYS AT LAW
ONE WASHINGTON MALL, SUITE 1400
BOSTON, MASSACHUSETTS 02108

THOMAS E. CLINTON
THOMAS J. MUZYKA
ROBERT E. COLLINS*
KENNETH M. CHIARELLO
TERENCE G. KENNEALLY
ARTHUR P. SKARMEAS**
Of Counsel

*Also admitted in RI

**Also admitted in NH

June 22, 2005

TELEPHONE
(617) 723-9165
FACSIMILE
(617) 720-3489
E-MAIL:
c&m@clintmuzyka.com

Latti & Anderson, LLP
30-31 Union Wharf
Boston, MA 02109

Attention: David Anderson, Esq.

Re: Stephen Walsh vs. Woods Hole,
Martha's Vineyard, & Nantucket
Steamship Authority
Civil Action No: 04-12595-RGS

Dear Attorney Anderson:

We refer to the above matter and we wish to advise that we have scheduled an independent medical examination of Stephen Walsh at the office of Edward A. Nalebuff, M.D., Hand Surgical Associates, 125 Parker Hill Avenue, Boston, MA 02120 (617) 738-0857, for Wednesday, July 27, 2005 at 1:00 p.m.

Please note, any cancellation of this appointment must be given 48 hours in advance of the scheduled examination in order to avoid incurrence of unnecessary expenses by cancellation of an appointment.

Thank you for your cooperation and courtesy in this regard.

Very truly yours,


Kenneth M. Chiarello

KMC:cm

EXHIBIT "A"

CLINTON & MUZYKA, P.C.
ONE WASHINGTON MALL, SUITE 1400
BOSTON, MA 02108
617.723.9165 TEL
617.720.3489 FAX
KCHIARELLO@CLINMUZYKA.COM

FACSIMILE TRANSMITTAL SHEET

TO:	David Anderson, Esq.	FROM:	Kenneth M. Chiarello
COMPANY:	Latti & Anderson, LLP	DATE:	August 26, 2005
FAX NUMBER:	617-523-7394	TOTAL NO. OF PAGES INCLUDING COVER:	1
PHONE NUMBER:	617-523-1000	SENDER'S REFERENCE NO.:	

**Re: STEVEN WALSH vs. WOODS
HOLE, MARTHA'S VINEYARD &
NANTUCKET STEAMSHIP AUTHORITY
Civil Action No: 04-12595-RGS**

Dear Attorney Anderson,

In reference to the above-matter, please be advised that we have scheduled another Independent Medical Examination for your client. The examination is scheduled for September 13, 2005 at 11:10 a.m., and will be conducted by Dr. Edward Nalebuff (Hand Surgical Associates) at the New England Baptist Hospital. Please have your client bring to the examination any and all diagnostic films (x-rays, MRI's, etc.) relating to his injury.

Thank you for your cooperation.

Very truly yours,

Kenneth M. Chiarello

, EXHIBIT "B"

TRANSMISSION REPORT

(FRI) AUG 26 2005 13:37

Account Name :
 DESTINATION : 16175237394
 DEST. NUMBER : 16175237394

F CODE :

DOCUMENT# : 6337455-199
 TIME STORED : AUG 26 13:36
 TIME SENT : AUG 26 13:36
 DURATION : 14sec
 MODE : ECM

PAGES : 1 sheets
 RESULT : OK

CLINTON & MUZYKA, P.C.
 ONE WASHINGTON MALL, SUITE 1400
 BOSTON, MA 02108
 617.723.9165 TEL
 617.720.3489 FAX
 KCHIARELLO@CLINMUZYKA.COM

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DIAGNOSIS CODE	SERVICE DATE	PROCEDURE CODE	PATIENT NAME	DOCTOR CODE	DESCRIPTION	PATIENT	INSURANCE
	091305		WALSH STEPH	EAN	Balance Carried Forward	0.00	0.00
					NO SHOW FEE	500.00	
					TOTAL FOR VISIT 1	500.00	0.00

===>

CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	BALANCE DUE	PATIENT	INSURANCE
500.00						500.00	0.00

PATIENT IS RESPONSIBLE FOR
"BALANCE DUE" SHOWN

ACCOUNT NUMBER 29609	STEPHEN WALSH
-------------------------	---------------

HAND SURGICAL ASSOCIATES, INC.
 125 PARKER HILL AVE
 BOSTON, MA 02120
 Telephone: (617)-738-0857

Clinton & Muzyka, P.C.

Hand Surgical Associates, Inc.

Walsh, Stephen - No Show Fee
 Account No. 29609

10/26/2005

4709
 500.00

PAYMENT
RECORD

EXHIBIT "C"

Disbursement Account Walsh, Stephen - No Show Fee

500.00

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEPHEN WALSH,
Plaintiff

VS.

WOODS HOLE, MARTHA'S
VINEYARD & NANTUCKET
STEAMSHIP AUTHORITY,
Defendant

CIVIL ACTION

NO: 04-12595-RGS

RECEIVED

SEP 19 2005

CLINTON & MUZYKA, P.C.

PLAINTIFF'S ANSWERS TO INTERROGATORIES
PROPOUNDED BY THE DEFENDANT

Now comes the Plaintiff in the above captioned matter and answers

Defendant's Interrogatories as follows:

Q. #1. Please state your name, date of birth, social security number, current residential address, present employer, present occupation, employer's business address, and your annual base salary.

A. #1. Stephen R. Walsh, DOB: 11/28/42, SSN: 034-32-2327
Current Residential Address: 18 Braeburn Court, East Falmouth, MA 02536
Present Employer: Woods Hole, Martha's Vineyard and Nantucket Steamship Authority
Present Occupation: AB Purser
Employer's Business Address: Woods Hole, MA
Annual Base Salary: Approximately \$50,000

Q. #2. Please state the exact time and date your injury occurred and describe the exact location where the injury occurred by giving the distance and direction to at least three (3) fixed objects in the same area.

A. #2. The Plaintiff's injury occurred on 12/15/01 at approximately 12:30 pm on the 01 deck, roughly amid ship. The Plaintiff was in the starboard side supply locker when the door swung shut.

EXHIBIT "D"

p. Gail Walsh
18 Braeburn Court
East Falmouth, MA 02536
Spouse of Plaintiff

Q. #19. Please identify each expert witness expected to testify at trial and state the subject matter(s) on which the expert is expected to testify, the substance of all facts to which the expert is expected to testify, the contents of all opinions to which the expert is expected to testify, and a summary of the grounds for each opinion that the expert is expected to render.

A. #19. Shawn P. Mills, M.D.
348 Gifford Street
Falmouth, MA 02540

Dr. Mills is a board certified orthopedic surgeon and the Plaintiff's treating physician. Dr. Mills is expected to testify that as a result of getting his hands crushed in the door on the Defendant's vessel the Plaintiff sustained a crush injury and lacerations of his 3rd and 4th fingers of his hand resulting in comminuted fractures of his distal phalanges as well as disruption of the nail beds. Dr. Mills is expected to testify that as a result of this crush injury the Plaintiff's nail beds were driven under the skin resulting in the need for revision surgery. Dr. Mills is expected to testify that as a result of the injury the Plaintiff experienced a lot of pain and was disabled from work for approximately two months. Dr. Mills is expected to testify that as a result of this injury the Plaintiff has decreased sensation and slight tingling and experience pain within the hand when exposed to cold. Dr. Mills is expected to base his opinions upon his education training and experience as well as the history provided by and the treatment of the Plaintiff. Plaintiff refers the Defendant to Dr. Mills medical records for greater detail.

Q. #20. If since the incident you have suffered any injuries or have been involved in any incident where you suffered personal or emotional injuries, please state the date, time and place of the incident, the manner in which the incident happened, and identify all persons involved or have knowledge of the incident.

A. #20. N/A

Q. #21. If you have ever asserted a claim for damages or for compensation of personal injuries, please state the date of injury, the nature of the injury, the amount of damages or compensation received, and the names and